

## **DRAFT MINUTES**

**Regular Meeting  
Commission on Local Government  
12:00 p.m., November 17, 2008  
Board of Supervisors Board Room, Second Floor  
Montgomery County Government Center  
755 Roanoke Street  
Christiansburg, Virginia**

### **Members Present**

Frances M. Parsons, Chairman  
Vola T. Lawson, Vice Chairman  
Harold H. Bannister, Jr.  
Elmer C. Hodge, Jr.  
Kathleen K. Seefeldt

### **Members Absent**

### **Staff Present**

Susan Williams, Local Government Policy Manager  
Steve Ziony, Principal Economist  
Matthew Bolster, Senior Policy Analyst

### **Call to Order**

The Chairman called the meeting to order at 12:00 Noon on November 17, 2008 in the Board of Supervisors Board Room at the Montgomery County Government Center in Christiansburg, Virginia. Mrs. Parsons recognized Montgomery County Administrator Clayton Goodman who came forward and welcomed the Commission to Montgomery County.

#### **I. County of Montgomery – Town of Christiansburg Proposed Revenue and Economic Growth-Sharing Agreement**

Ms. Williams provided the staff update. She reminded the other members that Mrs. Parsons will not be participating in the Commission's review of the proposed

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agreement because she owns property in Montgomery County, and she has recused herself.

Ms. Williams indicated that the Commission's public hearing on the proposed agreement will take place this evening beginning at 7:00 PM in the same room. She added that the tour of the affected area will begin at 9:00 AM on November 18, and the oral presentations by the parties to the proposed agreement will begin at 10:30 AM.

Ms. Williams stated that this is a case of first impression for the Commission in that the Commission has never been asked to review an economic growth-sharing agreement like the one submitted by Christiansburg and Montgomery County, which was negotiated under Va. Code § 15.2-1301.

Ms. Williams went on to point out that this review is distinguished from some of the other reviews undertaken by the Commission in three primary ways. First, Ms. Williams indicated that there are no statutory timeframes with regard to the issuance of the Commission's findings and recommendations or report.

Second, Ms. Williams indicated that there is no requirement for the Commission to conduct a public hearing, to tour the affected area or to have oral presentations by the parties. Ms. Williams recalled that the Commission decided to engage in these activities at their last regular meeting on September 8. Ms. Williams also stated that there are no notice requirements for one of these reviews but indicated that the Commission followed the notice requirements outlined in the *Code of Virginia* for other Commission reviews. Accordingly, Ms. Williams stated that a Notice of Public Hearing and Oral Presentations appeared in the *Roanoke Times* and in the *News Messenger* on Wednesday, October 29

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and again on Wednesday, November 5. In addition, Ms. Williams indicated that a copy of the notice was provided to the following jurisdictions in addition to Christiansburg and Montgomery County: the Town of Blacksburg; Craig, Floyd, Giles, Pulaski and Roanoke Counties and the City of Radford.

Ms. Williams stated that the third distinction is that there is no clearly articulated standard of review – such as “best interests” of the Commonwealth or community – in the Code for economic growth-sharing agreements negotiated under Va. Code § 15.2-1301. Mr. Bannister asked whether the Commission must approve the agreement, and Ms. Williams explained that there is no language in the Code stating that the Commission must approve the agreement or make recommendations as to whether the agreement should be approved. Instead, Ms. Williams explained that it is a review that the Commission must complete prior to the public hearings that the localities are required to conduct before they can approve the agreement. Ms. Williams also noted that this kind of agreement is not subject to subsequent review or approval by a special court.

Ms. Williams then distributed copies of the relevant Code sections and Commission regulations. Ms. Williams next quoted key language from the Code as follows: ...”the public hearing [by the localities] shall not take place until the Commission on Local Government has issued its findings in accordance with subsection D,” which provides: “Revenue, tax base and economic growth-sharing agreements drafted under the provisions of this chapter shall be submitted to the Commission on Local Government for review as provided in subdivision 4 of § 15.2-2903,” which further provides: “The Commission shall have the following general powers and duties: ... (4)

to investigate, analyze, and make findings of fact, as directed by law, as to the probable effect on the people residing in any area of the Commonwealth of any proposed action in that area: ... (h) to enter into economic growth-sharing agreements among localities.”

Ms. Williams indicated that the next regular meeting of the Commission is scheduled for January 12, 2009 in Richmond. Ms. Williams stated that Commission staff plans to prepare a draft report and distribute it to the members by the end of December for their review prior to the January meeting.

## **II. Administration**

### **A. Approval of Minutes of Regular Meeting of September 8, 2008**

Mrs. Lawson made a motion that the minutes of the Commission’s regular meeting of September 8, 2008 be approved; such motion was seconded by Mr. Bannister, and the Commission unanimously approved the minutes without amendment.

### **B. Public Comment Period**

Mrs. Parsons opened the floor to receive comments from the public. No person appeared to testify before the Commission during the public comment period.

### **C. Presentation of Financial Statement for October 2008**

Referencing an internally produced financial statement that encompassed expenditures through the end of October 2008, Ms. Williams stated that the financial report covered one-third of Fiscal Year 2009 (FY09) and that Commission non-personnel expenditures for that two-month period represented 15.33% of the total amount budgeted for the fiscal year. Ms. Williams noted that a transfer of \$20,000 - \$25,000 to the Commission’s budgeted amount for personnel expenditures for FY09 is forthcoming. The

members accepted the report for filing. Ms. Williams indicated that the Governor's FY 2010 budget is scheduled for release on December 17. She explained that the Commission's budget was not reduced in the first round of agency reductions, which were announced by the Governor on October 9.

**D. Local Government Policy Manager's Report**

**1. Staff Activities and Reports**

Ms. Williams stated that Mr. Bolster made an outstanding presentation to the Joint Subcommittee Studying Development and Land Use Tools (SJR 70/HJR 178) on September 11, for which he received praise from members of the Subcommittee as well as a DHCD On-the-Spot Award. Ms. Williams then distributed copies of Mr. Bolster's presentation to the members. Ms. Lawson asked Ms. Williams to contact the Virginia Municipal League (VML) and the Virginia Association of Counties (VACo) to see if either or both organizations would be interested in having Mr. Bolster make this presentation at one of their conferences.

Ms. Williams then stated that Ms. Johnson completed the Commission's annual license tax survey. Ms. Williams explained that this is an enormous undertaking, which involves multiple phone calls and emails to 42 town officials to obtain the information needed. Ms. Williams indicated that, for the first time, Ms. Johnson was able to get a 100 percent response rate this year, and she was recognized for her extraordinary efforts. Mrs. Parsons asked that Ms. Johnson be commended on behalf of the Commission.

Ms. Williams stated that she prepared DHCD's Biennial Report on Virginia's Planning District Commissions and submitted it to the Governor and the General

Assembly on September 30. In addition, she made a presentation on Intergovernmental Relations – along with the Herndon Town Attorney – to the Town Section at the VML Annual Conference on October 20 in Norfolk.

## **2. Updates on Business Discussed at September 8, 2008 Commission Meeting**

Ms. Williams informed the members that the Model Public Participation Guidelines adopted by the Commission at the September 8, 2008 regular meeting were subsequently filed and published in the Virginia Register and became effective on October 29, 2008.

Ms. Williams announced that the letters approved by the Commission at their September 8, 2008 regular meeting and directed to the two localities that failed to submit the financial data required under Va. Code § 15.2-2510 to the Auditor of Public Accounts in a timely manner were apparently successful. Both jurisdictions have now submitted their information, which Mr. Ziony must have in order to compute the annual fiscal stress of Virginia's counties and cities.

Finally, Ms. Williams provided a very brief update on potential interlocal issues, highlighting requests for technical assistance regarding a potential voluntary settlement agreement.

## **3. Meeting Per Diem**

Ms. Williams stated that, in accordance with the Commission's policy on compensation and reimbursement, per diem will be paid to Mrs. Lawson, Mrs. Seefeldt and Mr. Bannister for November 16, 2008; to all members present for their service to the Commonwealth on November 17, 2008; to all members present for their service to the

Commonwealth on November 18, 2008; and to Mrs. Lawson and Mrs. Seefeldt for November 19, 2008.

**III. Joint Subcommittee Studying Development and Land Use Tools**

**A. Staff Update**

Ms. Williams stated that the Joint Subcommittee Studying Development and Land Use Tools (SJR 70/HJR 178) held meetings on September 11; October 9; and November 12 and will meet next on January 13, 2009. Ms. Williams explained that the Subcommittee has established three workgroups: Work Group # 1 (Proffers vs. Impact Fees), which met on October 9; Work Group # 2 (Cooperation with State/Regional/Local Public Entities and Utilities), which met on October 9 and November 12; and Work Group # 3 (Enforcement and Clarification of UDA Statute), which met on October 8. Ms. Williams explained that Commission staff is monitoring the meetings of the full Subcommittee and is participating on each of the three Work Groups. She also indicated that, while the Subcommittee does not anticipate introducing legislation during the 2009 General Assembly Session, there has been some discussion at the Work Group and Subcommittee levels about an enhanced role for the Commission on Local Government in the land use area.

**IV. State and Local Government Finances: A 50 State Profile (FY 2006)**

**A. Staff Presentation**

Mr. Ziony explained that, since the late 1990's, the Commission on Local Government has issued six reports that show, by fiscal dimension and level of government, own-source general revenue and direct general expenditures (a) on a per

capita basis, (b) as a percentage of personal income, and (c) in relative impact terms for the nation at large. He indicated that the most recent statistical survey rests upon six spreadsheets that display 204 computed and rank score variables linked to three funding dimensions and seven outlay categories. In addition, he stated that the baseline data have been derived from two master files of the U.S. Census Bureau that cover the government finance characteristics of the 50 states and their respective localities during FY 2006.

Mr. Ziony noted that, from the perspective of the U.S. Census Bureau, own-source general receipts encompass collections from taxes, current charges, and miscellaneous funding bases (e.g., property sales, special assessments, interest-bearing deposits, and land-use fees). He further commented that the scope of these revenues, however, does not extend to any amounts generated by inter-governmental transfer payments or by liquor stores, utilities, and insurance trust funds falling within the proprietary control of a given state or locality.

Mr. Ziony stated that direct general expenditures reflect all operating and capital outlays except inter-governmental transfer payments and direct disbursements relative to publicly controlled liquor stores, utilities, and insurance trust funds. He elaborated that, as treated by the U.S. Census Bureau, the expenditure dimension embraces the categories of governmental administration, educational services, social services and income maintenance, transportation, public safety, environment and housing, and miscellaneous functions. Mr. Ziony further observed that the latter component of the classification framework captures “unallocable outlays” pertaining, for example, to civil defense

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programs, crime victim assistance activities, election oversight functions, economic development projects, and job training and placement services.

Mr. Ziony told the members that, as documented by Table 1D of the current report, total state and local revenue per capita amounted to \$5,840.81 in Virginia across FY 2006. He added that, during that year, the median, or midpoint, statistic for the 50 states was \$5,616.30. Mr. Ziony explained that the per capita amount registered by the Commonwealth exceeded the central-tendency value relative to the nation as a whole by 4.0%. Mr. Ziony noted that Table 1D also discloses that Virginia ranked 20<sup>th</sup> in aggregate state and local revenue gauged on a per capita basis; the Commonwealth fell within the upper half of the national distribution.

Mr. Ziony commented that a markedly different comparative profile can be found in Table 2D. He said that, over the course of FY 2006, as that exhibit reveals, the cumulative revenue of Virginia's state and local governments represented 15.38% of personal income throughout the Commonwealth, but the national median statistic was 16.73% for aggregate tax and non-tax collections relative to income. Accordingly, Mr. Ziony reported that the revenue effort level of Virginia trailed the central-tendency score for the 50 states by 8.1%. He further stated that the Commonwealth ranked just 41<sup>st</sup> (i.e., in the bottom 20% of the state-by-state distribution) on the revenue/income scale.

With respect to state and local expenditures per capita (see table 4H), Mr. Ziony explained that Virginia registered a total of \$6,421.82 during FY 2006; however, the median value across the 50 states reached \$6,554.58. Consequently, Mr. Ziony explained, the spending burden of the Commonwealth lagged behind the midpoint

statistic for the nation at large by 2.0%, and Virginia's ranking among the 50 states was only 30<sup>th</sup>. Mr. Ziony commented that, as Table 5H indicates, the outlay profile of the Commonwealth displayed even greater weakness in relation to personal income. Mr. Ziony reported that, over the most recent measurement period, state and local government disbursements, in the aggregate, constituted 16.91% of income within Virginia, yet the national median statistic reached 20.36% during FY 2006. Mr. Ziony stated that the Virginia percentage understated the midpoint value for the U.S. as a whole by 16.9%. Mr. Ziony added that the Commonwealth ranked only 46<sup>th</sup> on the 50-state scale of public-sector spending relative to personal income.

**V. 2008 Catalog of State and Federal Mandates on Local Governments (Draft)**

**A. Staff Presentation**

Mr. Bolster explained that the update of the Catalog of State and Federal Mandates on Local Governments is an annual task, and one of the Commission's statutory responsibilities. The Commission has been responsible for this task since 1993.

Mr. Bolster noted that the last catalog was issued in November 2007 and included mandates in legislation enacted in 2006 and 2007, plus newly identified mandates and changes to existing mandates as of October 2007. The revisions contained in this current edition are not as extensive because only one General Assembly session has occurred in the interim. It contains new mandates from legislation enacted in the 2008 General Assembly session as well as other changes between November 2007 and October 2008.

Mr. Bolster explained that Executive Order 58 further defines the Commission's activities related to mandates. EO 58 defines a mandate as "a state or federal

constitutional, statutory, or administrative action that places a requirement on local governments.” It further divides mandates into four types. Compulsory Orders require local government compliance regardless of receipt of aid or other circumstances. Conditions of Financial Aid require compliance only if the local government accepts the state or federal assistance in question. Regulation of Optional Activities mandates result from state or federal regulation of activities that local governments undertake voluntarily. Finally, State Fiscal Preemption mandates are measures or actions that result in a net reduction of revenues collected by a locality or restrict a locality’s authority to collect such revenues. Mr. Bolster said that this last type is new and was added by recommendation of the mandates task force. No mandates of this type are yet in effect, although several have been proposed in the General Assembly in recent years. Examples are proposals to limit, by state law, the annual growth in local real estate assessments or real estate tax rates.

Mr. Bolster noted that, in most cases, compliance with mandates is overseen by a related state agency. These agencies ensure local government compliance with state statutes and regulations but may also have some responsibility for ensuring compliance with related federal statutes and regulations. This typically happens when the federal government provides funding to the state to administer certain services and projects. Examples of functional areas with major federal funding passed through the state are transportation, human services, education, and emergency management. Therefore, many of the mandates listed in the catalog include references to both state and federal statutes and regulations as their source of authority.

Mr. Bolster then commented on the organization of the catalog. Part A lists mandates that are overseen by state executive branch agencies. Each listing in Part A has a title, an identification number, and a brief description, including the type of mandate, the agency responsible for oversight, that agency's secretariat, and the code sections that provide legal authority for the mandate. Sometimes identification numbers are missing from the sequence because previous mandates have been eliminated. When this happens, the numbering for the rest of the mandates stays the same. The last part of each listing refers to the last period when the mandate was assessed, the last finding, and the current schedule for reassessment. Pursuant to EO 58, there is no longer regular reassessment of mandates. Only new mandates are assessed, except in a few circumstances.

Mr. Bolster directed the members' attention to Part B, which contains mandates overseen by nonexecutive or independent agencies. For example, the Virginia Supreme Court is ultimately responsible for ensuring that localities provide funding and facilities for local court systems. Part B also encompasses mandates with no agency oversight. In other words, local governments must comply, but no state agency is assigned to check on them. An example is the requirement that every locality update its comprehensive plan every five years. None of the mandates in Part B are subject to assessment.

Mr. Bolster then discussed the six appendices in the catalog. Appendix A contains EO 58, which describes mandate assessment procedures. Appendix B contains the current FY 08-09 schedule for mandate assessments. All of these were listed in last year's catalog but have never been previously assessed. Appendix C contains a listing of all the changes made since the last edition of the catalog. Appendix D separately lists the

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principal federal mandates that affect Virginia localities. References to these can be found in many of the mandate listings in Part A. Appendix E contains a table summarizing the number of mandates by type and agency. This table was not included in last year's edition of the catalog. Finally, Appendix F contains the statutes in the Code of Virginia that apply to mandates.

Mr. Bolster gave a brief description of how staff compiled the catalog. In August 2008, staff conducted a review of adopted 2007 legislation and identified several new mandates and expansions of others. Staff then asked representatives of all executive and nonexecutive agencies to review the 2007 mandate listings and provide any additions, deletions, or changes. All this information was compiled into the catalog.

Mr. Bolster observed that there are 560 mandates in the catalog; 447 of these are overseen by executive agencies and are included in Part A. Another 113 are overseen by nonexecutive agencies or have no state oversight and are included in Part B. The 2007 catalog contained 553 mandates, with 444 in Part A and 109 in Part B. The net increase is seven. Mr. Bolster then asked the members to turn to Appendix C to review some of the notable changes. He commented that the last General Assembly session did not result in very many new mandates on local governments. There are only four new or newly identified mandates that are subject to agency review. One such mandate was eliminated, so the net increase is three. There are also four new or newly identified mandates that are not subject to review.

**B. Commission Deliberation and Action**

Mr. Bannister asked whether all state agencies are current on their mandate assessments per the schedule in Appendix B. Mr. Bolster replied that they are, with the exception of the Department of Health, which has one assessment still awaiting the cabinet secretary's approval. The assessment schedule for this fiscal year is heavily weighted toward the first half of the year, which was simply the choice of the various agencies. Staff will present a proposed FY 2009-10 mandate assessment schedule to the Commission in May 2009. Mr. Bannister also asked Mr. Bolster how long it took to prepare the catalog. Mr. Bolster replied that it occupied a substantial part of his time in the August-October time period, but not as much as the previous year. Overall, he estimated that perhaps one-quarter of his time involved the mandates catalog. Upon a motion by Mrs. Lawson and seconded by Mr. Bannister, the Commission unanimously adopted the 2008 Catalog of State and Federal Mandates on Local Governments without amendment.

**VI. 2008 Report on Proffered Cash Payments and Expenditures by Virginia's Counties, Cities and Towns (Draft)**

**A. Staff Presentation**

Mr. Bolster explained that §15.2-2303.2 requires the Commission to annually collect data from local governments on use of cash proffers. Every eligible locality with a population over 3,500 must report its use of cash proffers to the Commission for each fiscal year. The Commission must in turn compile the information into a report and provide it by November 30 of each year to the chairmen of the Senate Local Government Committee and the House Counties, Cities and Towns Committee.

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Mr. Bolster said that 153 localities meet the criteria and must report to the CLG this year, including 88 counties, 36 cities, and 29 towns. Appendix B in the report contains a listing of all 281 localities that can accept cash proffers. 128 of these are small towns that do not have to report to the Commission.

Mr. Bolster then described the information collection process. Surveys were mailed out on July 9, 2008 to all 153 localities that are required to report. The due date was September 30. After some follow-up, staff achieved a 100% response rate. For the 2007-08 fiscal year, the survey asked localities to report total cash proffer revenue collected; cash proffers pledged, whose payment was conditioned only on time; cash proffer revenue expended; and the purposes for which cash proffer revenue was expended. The survey instrument is in Appendix C. Mr. Bolster commented that it did not take as much follow-up as last year to achieve a 100% response rate.

Mr. Bolster observed that 46 localities (30.1% of those eligible) reported cash proffer activity (collections, pledges, and/or expenditures) during the last fiscal year. This is an 8.0% decrease over the previous fiscal year, when 50 localities (32.7%) reported activity. The data for localities with proffer activity is tabulated in Appendix D. Mr. Bolster stated that the localities collecting the most cash proffers are counties in Northern Virginia. Prince William County leads the way at \$18.2 million while Loudoun County comes in second place at \$15.9 million. This is the same ranking as last year; because, in August 2008, Loudoun County corrected its 2007 figures from \$22.5 to \$13.4 million, which puts it in second place for 2007. There is a note about this correction in the report text. The only non-northern Virginia county among the top five is

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Chesterfield. Among cities, Manassas Park had the highest collections at \$2.7 million, while Chesapeake came in second at \$1.4 million. Williamsburg, the leader last year at \$1.4 million, reported no collections this year. The towns with the highest collections were Leesburg and Herndon at about \$143,000 and \$68,000 respectively. Warrenton, the leader last year at about \$84,000, reported no collections this year. Mr. Bolster indicated that total collections were \$60.2 million, a decrease of 11.9% from the prior year.

Mr. Bolster explained that cash proffers are often collected and expended in different years due to the time needed to plan capital facilities and accumulate sufficient fund balances. The pie chart on page 4 of the report summarizes the categories of expenditure of collected amounts. In FY 2007-08, localities used 36.1% of proffer expenditures for schools; 27.6% for transportation improvements; 12.5% for fire and rescue improvements; and the remaining 23.8% for libraries; parks, recreation, and open space; affordable housing; water and sewer service extension; special needs housing; and miscellaneous. Mr. Bolster commented that this is the same pattern as in FY 2006-07, although with less proportionate spending on schools. Prince William County was by far the greatest spender of cash proffer revenue in FY 2007-08 at \$18.6 million while Loudoun County was second at \$6.9 million. Among cities, Chesapeake spent the most, and among towns, Leesburg spent the most. Mr. Bolster stated that the total expenditures were \$50.1 million, an increase of 7.3% from the prior year.

Mr. Bolster went on to explain that reported pledges of cash proffers totaled \$64.7 million, an increase of 68.5% over the prior year. This is due to a very large \$44.2 million pledge reported by Albemarle County, attributable to major rezonings that

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generated pledges on 4,800 residential units. Mr. Bannister observed that Chesterfield County reported no pledges, yet continues to make collections and expenditures. Mr. Bolster explained that the section of the code requiring reporting of pledges is ambiguous, and some localities interpret it more narrowly than others. Chesterfield has no pledges that it considers “conditioned only on time,” as the code reads, since the pledges are tied to other events such as building permit issuance. However, each year Chesterfield provides supplemental information indicating that it receives many pledges conditioned on events other than time.

Mr. Bolster noted that SB 768, last year’s bill to substitute an impact fee system for the cash proffer system, would have required the Commission to prepare a parallel annual report on localities’ impact fee collections and uses by impact fee service area. Even if an impact fee system were adopted, the Commission would still have to do a survey of cash proffer usage, because collections from previous pledges and expenditures would be grandfathered and would be spread out over long periods of time. Mr. Bolster indicated that the requirement for an annual report on impact fee usage is also in recent legislation drafted by the Virginia Chapter of the American Planning Association.

**B. Commission Deliberation and Action**

Upon a motion by Mr. Bannister and seconded by Mr. Hodge, the Commission unanimously approved the report without amendment. Mrs. Lawson asked whether localities would be made aware of the report. Mr. Bolster replied that in the past there had been no outreach to inform localities about the availability of the report, but that the letter accompanying the survey refers localities to the web page where prior reports are

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available. The Commission asked staff to separately notify localities about the availability of the report through e-mail or other means.

**VIII. Scheduling of Regular Meetings**

The Commission confirmed that its next regular meeting will take place on Monday, January 12, 2009 at the Jackson Center in Richmond. The remaining 2009 regular meetings of the Commission are tentatively scheduled to take place at the Jackson Center in Richmond on the second Monday of the month as follows: March 9, 2009; May 11, 2009; July 13, 2009; September 14, 2009; and November 9, 2009.

**VIII. Adjournment**

There being no further business to come before the Commission, the meeting was adjourned at 1:32 p.m.

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Frances M. Parsons  
Chairman

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Susan B. Williams  
Local Government Policy Manager